

Congress of the United States
Washington, DC 20515

March 10, 2022

The Honorable Alejandro Mayorkas
Secretary of Homeland Security
U.S. Department of Homeland Security
3801 Nebraska Ave. NW
Washington, D.C. 20016

Mr. Tae D. Johnson
Acting Director
U.S. Immigration and Customs Enforcement
500 12th Street, SW
Washington, D.C. 20536

Dear Secretary Mayorkas and Acting Director Johnson:

We greatly appreciate your work to undertake a more humane approach to immigration enforcement, including the critical move to end contracts with the Bristol County Sheriff's Office and the Irwin County Detention Center. Earlier this year, we also applauded President Biden's Executive Order instructing the Department of Justice (DOJ) to phase out its use of private prisons.¹ We now write to express our concern over what appears to be an expansion of Immigration and Customs Enforcement (ICE) detention and respectfully request that you suspend any negotiations for new or expanded detention space with private prison contractors or county jails. We also ask that you clarify the Administration's civil detention policies, which we hope will reflect a commitment to ending the mass incarceration of immigrants.

Following the White House Executive Order ending privately operated prisons, Members of Congress called for the President to expand the order to include ICE detention.² Unfortunately, it appears that ICE is moving in the opposite direction. On September 29, 2021, ICE signed a contract to detain up to 1,875 immigrants at the GEO Group-operated Moshannon Valley Correctional Center, a former Bureau of Prisons jail in Philipsburg, Pennsylvania.³ ICE is also expanding the Pennsylvania Berks County ICE detention center for use as an adult facility for women. Similarly, we are concerned that the private prison company CoreCivic may also be looking to ICE to take over an expiring U.S. Marshals Services contract with the West Tennessee

¹ Executive Order on Reforming Our Incarceration System to Eliminate the Use of Privately Operated Criminal Detention Facilities (Jan. 26, 2021) <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/executive-order-reforming-our-incarceration-system-to-eliminate-the-use-of-privately-operated-criminal-detention-facilities>.

² See letter from Members of Congress to Acting DHS Secretary David Pekoske, calling on the Biden Administration to end private immigration detention (Jan. 28 2021) <https://connolly.house.gov/news/documentsingle.aspx?DocumentID=4184>.

³ The new ICE contract replaces the prison's BOP contract, which ended in March 2021 as a result of the aforementioned January Executive Order.

Detention Facility.⁴ These facilities all have a long-documented history of substandard conditions and abuse.⁵

These actions are being taken, at taxpayer expense, without justification for the resulting increase. In its January 2021 report, the Government Accountability Office (GAO) documented wasteful spending resulting from the significant jump in the number of beds ICE agreed to in detention contracts signed during the Trump Administration. More recently, the DHS Office of Inspector General (OIG) released a report in September 2021 on violations of ICE detention standards in the Otay Mesa facility, recommending that ICE review its contracting options to better identify housing requirements and determine if guaranteed minimums were necessary.⁶ Notably, ICE refused to concur with that recommendation. It is imperative that ICE review the number of beds ICE agreed to in detention contracts and provide clear justification to Congress before detention capacity is expanded further.

We are also concerned that ICE has extended existing contracts and entered into new ones in an effort to get ahead of changes in state and local law. For example, in 2019, the State of California passed AB32 which prohibits the operation of for-profit prisons and civil detention facilities in the State. In January 2020, just days before that law took effect, ICE hastily entered into new long term contracts in California with GEO Group.⁷ Further, in January 2021, after Washington State lawmakers introduced a bill to end private ICE detention, ICE modified its contract with GEO Group to extend the agreement for the 1,575-bed Northwest ICE Processing Center.⁸ Similarly, in August 2021, CoreCivic modified its 285-bed guaranteed minimum contract with ICE to extend its agreement to hold people in ICE detention in Elizabeth, New Jersey, after the New Jersey state legislature passed a bill to phase out immigration detention in the State.⁹ ICE must not be permitted to bypass state and local authority in this manner.

⁴ See Carrie Johnson, *Biden Ended Contracts with Private Prisons. So One May Turn To House Immigrants*, NPR, (Sep. 15, 2021) <https://www.npr.org/2021/09/13/1036576308/biden-ended-contracts-with-private-prisons-so-one-may-turn-to-house-immigrants>. See also, *CoreCivic Provides Update on U.S. Marshals Service Contract for the West Tennessee Detention Facility*, (Sep. 17, 2021) <https://finance.yahoo.com/news/corecivic-provides-u-marshals-contract-120000933.html>.

⁵ Dep't of Justice, Office of the Inspector General, *Review of the Federal Bureau of Prisons' Monitoring of Contract Prisons* (Aug. 2016) <https://oig.justice.gov/reports/2016/e1606.pdf>.

⁶ See Dep't of Homeland Security, Office of Inspector General, "Violations of ICE Detention Standards at Otay Mesa Detention Center," OIG-21-61, September 24, 2021, <https://www.oig.dhs.gov/sites/default/files/assets/2021-09/OIG-21-61-Sep21.pdf>.

⁷ Rebecca Plevin, *Adelanto Moves to Revisit Ending Contract for Troubled Immigration Detention Facility*, PALM SPRINGS DESERT SUN (April 11, 2019), <https://www.desertsun.com/story/news/politics/immigration/2019/04/11/adelanto-wants-revisit-decision-ending-immigrant-detention-facility-contract/3437933002/>.

⁸ *GEO Group sues to keep Tacoma immigrant detention center open*, THE ASSOCIATED PRESS (May 18, 2021) <https://www.knkn.org/news/2021-05-18/geo-group-sues-to-keep-tacoma-immigrant-detention-center-open>.

⁹ Rodrigo Torrejon, *N.J. jail renews deal with ICE while bill banning new contracts sits on Murphy's desk*, NJ ADVANCE MEDIA (Aug. 14, 2021) <https://www.nj.com/essex/2021/08/nj-jail-renews-deal-with-ice-while-bill-banning-new-contracts-sits-on-murphys-desk.html>.

In light of these concerns, we urge you to consider the following recommendations:

- **Suspend the expansion of ICE detention:** Issue a directive to pause any negotiations between ICE and private companies or local governments to enter into new agreements or extend existing detention contracts;
- **Shift away from private, for-profit ICE detention:** Consistent with the January 2021 Executive Order, implement policies to phase out immigration detention contracts with private prison companies and local governments;
- **Review all ICE detention facilities and policies:** Conduct a thorough review of all detention facilities and policies with the goal of phasing out the systematic mass detention of immigrants. The review should include input from community groups, legal service providers, people impacted by detention, and other relevant stakeholders.

In addition, we request that you provide the information below no later than April 10, 2022.

- **Pending contracts:** Any solicitation or procurement proposals, including Requests for Information (RFIs) or Requests for Proposals (RFPs) for new or modified ICE detention agreements;
- **DHS review process:** An update on the already announced DHS detention review, including reports on the facilities reviewed, timelines and guidelines for the review process, standards for grading facilities, criteria for stakeholder and public engagement, records and testimonies considered in the review process, plans for future closures, and;
- **New and extended contracts:** Any copies of extended or new ICE detention contracts, including all modifications, work orders, addenda, or negotiations with private contracts and local governments.¹⁰

In May 2021, you testified before Congress and expressed your concern about the excessive use of immigration detention.¹¹ Studies consistently show that most people are best equipped to successfully complete their removal proceedings when they have full access to the support of their families and communities and legal representation. As you review the detention system, we ask that you halt the expansion of ICE detention and urge you to embrace community-based alternatives to detention.

¹⁰ Congress has directed ICE to publish compiled contract documents for every detention facility, including the most current modifications and solicitations requests. The U.S. House of Representatives Appropriations Committee has also directed ICE to update this compilation on a monthly basis. See Report to Accompany the Department of Homeland Security Appropriations Bill, FY 2021, H.R. 116-458, p 38.

<https://www.congress.gov/116/crpt/hrpt458/CRPT-116hrpt458.pdf>.

¹¹ Rebecca Beitsch, *Biden Official Defends Trump-Era Immigration Policy*, THE HILL (May 26, 2021), <https://thehill.com/policy/national-security/555551-mayorkas-defends-trump-era-covid-policy-immigrationenforcement>.

Sincerely,



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Member of Congress



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Member of Congress



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